

Honorable Phil Hogan Chairman  
National Indian Gaming Commission  
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Washington D. C. 20005  
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November 14, 2006

**RE Proposed Rulemaking – Class II Gaming Definition and Classification Standards**

Dear Chairman Hogan:

The Delosa Valley Community Council (The Council) wishes to submit comment for the record on the newly proposed rules for Class II Gaming Definitions and Classification Standards.

The Council supports the language recommendations in the recent testimony of Tom Gede – Executive Director of the Conference of Western States Attorneys General. It addresses the unintended consequences that have been created by the indistinct line in defining Class II machines.

The emergence of Class II games that look, feel and play like conventional slots requires federal officials to tighten and clarify the legal definition of the bingo based devices. The Council seeks regulatory reforms which provide a uniform federal policy.

- ) A clear definition of Class II technological aids,
- ) A determination that an electronic or electromechanical facsimile is a Class III game,
- ) A process of consultation, comment and appeal to resolve conflicting determinations of Class II games which individual states identify as illegal.
- ) Concern over the Influence of Gaming Manufacturers

In 1991 the NIGC adopted a definition of a Class II technologic aid as:

“A device such as a computer, telephone, cable, television satellite or bingo blower and which when used: (1) is not a game of chance but merely assists player or the playing of a game; and (2) is readily distinguishable from the playing of a game of chance on an electronic facsimile; and (3) is operated according to applicable Federal communications law.”

This is a good definition. Each of these components standing alone represents a technological aid.

Expanded Class II definitions or a definition that leaves wiggle-room for ambiguity has the potential to make the tribal state compact process unnecessary and state powerless to regulate the growth of Indian casinos. Congress included the required development of a regulatory structure adequate to “shield (tribal gaming) from organized crime and other corrupting influences...and to assure that gaming is conducted fairly and honestly by both the operator and players.” 25 USC 2702 (2). A loose definition provides

opportunities for gaming manufactures to promote gaming devices that should be under the authority of a tribal state compact.

The definition of an electronic or electromechanical facsimile must include a device that plays like a game which incorporates any, some or all of the "fundamental components of a game", whether it is bingo or lotto. An electronic or electromechanical facsimile is any game which operates with an "element of chance". Such a determination is consistent with both the Johnson Act and IGRA. The goal of a new casino game classification is to promote a uniform federal standard.

The current Class II Bingo machines have been made to look like a slot machine. This is an intentional manufacture marketing scheme to enhance marketability of the machines to both operators and consumers. Machines identified as Class II machines by Tribes in operation in California are currently considered slot machines under California law.

Clearly the authorization of Class II machines without state oversight is beyond the intent of Congress in the passage of IGRA. NIGC should include a consultation and evaluation process for the certification of Class II games before final determinations are made. Most importantly, an appeal process must be established so that future potential disputes may be resolved without litigation.

Gaming Manufacturers are asserting influence over Tribal clients to affect this regulation.<sup>1</sup> Gaming manufacturers benefit if Tribes are discouraged from re-negotiating compacts even when Class III gaming is available and states are willing to expand gaming. It opens up a market for Class II manufactures. Moreover, states would be denied the right to manage the growth of the gaming industry through the tribal-state compact process. The compact process provides significant protections to the welfare of the public and a long-term stable relationship between sovereigns.


IGRA permits all Indian Tribes to conduct Class II gaming on Indian land. However, IGRA provides that Class III gaming may only be conducted with the express consent of the state (via a compact). **Many of the current gaming devices in use are electronic facsimiles, machines that "replicate" a game.** These machines meet the definition of slot machines in the federal Johnson Act and are prohibited under both California State Statute and Constitutional gaming law. While imitating a bingo game and playing against multiple players, they offer the operator an element of chance to win money or property.

Casino game classification enhances the supporting regulatory structure serving to ensure the integrity of the Tribal gaming industry. The Council supports a uniform federal policy that fulfills the intent of IGRA preserving the balance of authorities between states, Tribes and the federal government.

<sup>1</sup> *Tornae, Warning for Class II Gaming*, by D. Michael McBride III – Sneed, Lang P. C. and *Playing with the Rule: Class II Reduced* by Judith Shapiro. Shapiro Law. Both, July 2006 (has represented IGT)

Thank you for your continued efforts for clarification and the development of a clear-line  
in determining the definitions of Class II Gaming Definitions and Classification  
Standards.

Sincerely,



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